

Mini-Skool, Ltd., a Corporation of Canada, d/b/a Kinder-Care Learning Centers and Brotherhood of Teamsters and Auto Truck Drivers Local No. 70, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner. Case 32-RC-1788

29 February 1984

DECISION AND REVIEW AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND HUNTER

On 31 March 1983 the Regional Director for Region 32 issued a Decision and Direction of Election in this proceeding in which he found appropriate the Petitioner's requested unit of all employees at the Employer's Fremont, California center. He rejected the Employer's contentions that the smallest appropriate unit must include all of its employees, excluding cooks, at all five of its centers located in its Northern California district, and that, if cooks were included, a self-determination election would be required as the unit would include both professional and nonprofessionals. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, the Employer filed a timely request for review of the Regional Director's decision on the ground that, in finding the petitioned-for unit appropriate, his decision represents a departure from officially reported Board precedent and is clearly erroneous on the record. By telegraphic order dated 2 May 1983, the National Labor Relations Board granted the Employer's request for review. While the request was pending, the election was conducted on 29 April 1983, as scheduled, in the single location unit found appropriate by the Regional Director.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record in this case and makes the following findings:

The Employer, a Canadian corporation, operates over 700 day care centers in the United States and Canada,¹ with corporate headquarters located in

Montgomery, Alabama. The Employer has geographically divided its operations into various zones, each encompassing a number of States. The Employer's southwest zone, containing approximately 91 centers, covers 6 Southwestern States including California, which has approximately 33 centers divided into 3 districts. The Northern California district, District 3, contains five day care centers: two located in San Jose, Foxworthy, and Albany Drive, and one each in Salinas, Santa Clara, and Fremont. A district manager for District 3 maintains an office at the Foxworthy Center in San Jose, which is approximately 50 miles from Salinas, 30-35 miles from Fremont, 10 miles from Santa Clara, and approximately 8 miles from Albany, the other San Jose center. The management staff at each center consists of a center director and assistant director. There are also approximately 58 teachers at the 5 centers: 14 at Fremont, 16 at Foxworthy, 15 at Santa Clara, 9 at Salinas, and 3 at Albany. Each center also has one cook. There is no prior collective-bargaining history for any of the Employer's employees.²

The Employer operates year-round custodial and educational care for children between the ages of 6 months to 12 years. The Employer's goal is to provide the very best in early childhood educational service and to this end its corporate headquarters in Montgomery, Alabama, is responsible for preparing a uniform curriculum which must be followed by teachers at all of the Employer's centers throughout the United States. This corporatewide, standardized curriculum includes various reading readiness and math programs as well as a common classroom theme for each particular week and month of the year. In addition, each center uses the same type of equipment, has the same classroom setup, uses the same lesson plan guides, follows the same menus, uses identical financial and purchase order forms, and all teachers wear identical smocks. There are also uniform personnel policies covering, inter alia, employee benefits, evaluation,

\$250,000. There is no evidence in the record that such income has since diminished. Based on the above, we find that the Employer's operations affect commerce within the meaning of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

Based on these facts, Member Hunter finds that the assertion of jurisdiction appears warranted here. He also notes that no party has raised this issue. Chairman Dotson expresses no opinion as to the assertion of jurisdiction in this case.

² We note, as mentioned above in fn. 1, that in 1980 the Employer purchased the day care facilities involved in *Living and Learning Centers*, above. Although the employer in that case was found to have violated Sec. 8(a)(5) of the Act and was ordered to bargain with the certified representative of its employees at its Waltham, Massachusetts day care center, there is no record evidence that the Employer ever negotiated a contract with the employees' representative and thus there is no previous collective-bargaining history involving the Employer's employees.

¹ Although the parties stipulated that the Employer is engaged in commerce within the meaning of the Act and that it is subject to the Board's jurisdiction, the only supporting record evidence is a further stipulation that during the past 12 months the Employer at its Fremont center purchased and received goods in excess of \$50,000 directly from suppliers located outside the State of California. This clearly satisfies the Board's statutory jurisdiction but does not approach the Board's discretionary standard of \$250,000 in gross annual revenues for day care centers. *Salt & Pepper Nursery School*, 222 NLRB 1295 (1976); *Living & Learning Centers*, 251 NLRB 284 (1980), enf. 652 F.2d 209 (1st. Cir. 1981). However, the record clearly establishes that the Employer operates over 700 day care centers throughout the United States and Canada and that in 1980 it purchased the *Living & Learning Centers*, which was found by the Board in the above-cited case to have a gross annual income in excess of

job descriptions, and policies and procedures which are set forth in the employee handbook.

Within the Employer's District 3, employee pay scales are identical and seniority and benefits can be transferred from one center to another. Layoffs, however, are based on center, not district seniority; but a laid-off teacher is entitled to the first available opening at another center. There are no bumping rights. Although each center arranges for its own janitorial service, the district manager provides for all maintenance and repair at the five centers. All center directors attend a meeting with the district managers once a month. The Employer is budgeted on a districtwide basis with the district manager maintaining a consolidated profit and loss statement. The district manager also audits all five centers' financial books and petty cash, reviews weekly financial reports submitted by each center, approves all invoices, and submits financial and enrollment reports to the corporate headquarters.

The district manager hires all directors and assistant directors. The center directors interview prospective teacher applicants and have the power to hire and fire teachers in conjunction with the district manager. The district manager routinely conducts a second interview for new hires, although not in every case. Assistant directors may also conduct a second interview; occasionally, these second interviews are done by directors at other centers, especially if the director at the understaffed center is new. Two interviews are required and sometimes applicants have more than two. In all cases, no teacher may be hired without the approval of the district manager who has the final say. Moreover, the beginning salary for a teacher depends on experience and the exact amount is within the discretion of the district manager. Directors, however, hire and fire cooks without district approval.

The Employer's standard evaluation system determines teacher wage increases. The center directors, with the aid of the assistant directors and head teachers, evaluate each teacher by assigning from 1 to 5 points to approximately 85 questions. Center directors make no recommendations with respect to whether a wage increase should be given. Instead, the district manager analyzes the evaluation submitted and totals the number of points, which determines the amount of the raise. The district manager usually accepts the point calculation submitted, but on occasion has requested the center director to recalculate the points.

The center director and district manager train newly hired teachers with respect to job functions and instruct them regarding the employee handbook; the center director conducts workshops for

teachers and holds monthly staff meetings. The center director also schedules work and approves time off. Employee grievances are resolved initially by the center director or the assistant director. However, a teacher may appeal any decision to the district manager and, if still dissatisfied, to the zone manager.

At least once a week there is interchange between the five centers, either by a teacher, a substitute, or by a center director or assistant director. Transfers of teachers are on an "as needed" basis. Thus, if enrollment drops at one center, a teacher is assigned to another center, either temporarily or permanently. Teachers are also temporarily transferred between centers when illness occurs. For example, on one occasion when five teachers were out ill, five teachers from another center and substitutes from two other centers were transferred to the center that was understaffed. Also, each center maintains a substitute list composed of former employees and persons wishing to work as substitutes, which includes the names of persons who have indicated a willingness to work at more than one location. If the substitute list at any given center becomes exhausted, the center director will call the other centers and draw from their lists. Thus, temporary teacher vacancies are normally filled from a center's substitute list, or the substitute list of another center, or the staff at another center. The Employer also utilizes a "mini task force," a team composed of personnel from various centers who goes with the district manager to a particular center to help teachers set up classrooms and make out lesson plans. Usually, the task force is made up of the center directors and at least one or two teachers. In addition, the centers often take field trips, particularly in the summer. The Fremont center and other centers have combined to make these field trips. In particular, the Fremont and Foxworthy centers usually take a summer field trip together to Elizabeth for a picnic and watermelon-eating contest.

This evidence clearly shows that the Employer is administratively highly centralized and that its center directors have only limited autonomy over labor relations at their respective centers. Thus, the district manager is directly involved in the hiring process and no teacher may be hired without the district manager's approval; a teacher's beginning salary is within the discretion of the district manager; while center directors may initially resolve employee grievances, all decisions are appealable; and although the evaluations filled out by the center directors give a numerical rating, they carry no recommendations, and the rating, while usually accepted by the district manager, is sometimes re-

turned for recalculation. In addition, contact and interchange involving staff members among the Employer's five centers occurs regularly, and temporary teacher vacancies are normally filled, in part, with teachers or substitutes from other centers. Accordingly, based on these factors, we find that the single location unit sought by the Petitioner is inappropriate.³ Instead, as the Employer's

³ *Living & Learning Centers*, above, wherein the court approved the Board's finding that a bargaining unit composed of employees at one of the employer's day care centers was appropriate is distinguishable. In *Living & Learning*, unlike here, the local director had independent authority to hire and fire teachers, to recommend wage increases, and to impose discipline. Moreover, in that case there was a complete absence of temporary interchange; permanent transfers involved only 6 percent of all Massachusetts employees; and there was only minimal contact between teaching staffs as statewide workshops were not regularly scheduled and there was no requirement to attend. Also, the unit claimed appropriate by the Employer in *Living & Learning* consisted of 29 day care centers with 400 employees and thus was considerably larger than the unit proposed by the Employer here—5 centers with 58 employees.

centers are administratively grouped into districts under the supervision of a district manager with considerable contact and interchange among the centers, we find that a districtwide unit would constitute the smallest appropriate unit for the purposes of collective bargaining. As such unit is considerably larger than the unit sought, involves multilocations, and the Petitioner has not indicated that it would go to an election in any unit other than the one petitioned for, we shall dismiss the petition.⁴

ORDER

The election conducted on 29 April 1983 is vacated, and the petition is dismissed.

⁴ As we are dismissing the instant petition, we need not reach the issues raised by the Employer with respect to the inclusion of cooks in the unit found appropriate.